

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

C.A. No. 2019 -_____

ZYXEL COMMUNICATIONS, INC.,
Individually and as Assignee of MitraStar
Technology Corporation,

Plaintiff,

v.

SKYWORKS SOLUTIONS, INC.,

Defendant.

COMPLAINT

PARTIES

1. Plaintiff, ZYXEL COMMUNICATIONS, INC. (“ZyXEL, Inc.” or “Plaintiff”), is a California corporation with a principal place of business located at 1130 North Miller Street, Anaheim, California.

2. Defendant, SKYWORKS SOLUTIONS, INC. (“Skyworks” or “Defendant”), is a Delaware corporation with a principal place of business located at 20 Sylvan Rd, Woburn, Massachusetts.

JURISDICTION & VENUE

3. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that it arises under the laws of the United States, namely, 18 U.S.C. § 1964. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1337, since the claims form part of the same case or controversy arising under federal law.

4. Venue for this action in the United States District Court for the District of Massachusetts is proper pursuant to 18 U.S.C. § 1965 because Skyworks resides and transacts business in the District of Massachusetts. Venue is also proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in the District of Massachusetts, and Skyworks' principal place of business is located in Woburn, Massachusetts.

FACTS

Manufacturer, Distributor, and Purchasers of Skyworks Semiconductor Device

5. Skyworks designs and manufactures, inter alia, semiconductor devices for the wireless networking industry, including for use in the production of wireless routers. Skyworks uses Asian Information Technology Inc. ("AIT"), a Taiwanese corporation, as its sales representative and distributor for, inter alia the sale of such semiconductor devices. At all relevant times, on information and belief, both Skyworks and AIT were engaged in, and/or their activities affected, interstate commerce within the United States and/or foreign commerce.

6. Skyworks and AIT, on information and belief, had a contractual agreement that AIT would exclusively act as Skyworks' agent, as directed by Skyworks, to market and sell its Microwave Monolithic Integrated Circuit Power Amplifier ("MMIC Power Amplifier") designated as model SE2605L-R (the "Skyworks SE2605L-R") and other Skyworks products to entities in the United States and elsewhere for incorporation into, inter alia, wireless routers, which would then be sold to distributors and marketers of wireless routers. On information and belief, Skyworks made regular and repeated use of the facilities and services of AIT from, upon information and belief, 2002 to present.

7. MitraStar Technology Corporation ("MitraStar") is a Taiwanese manufacturer, inter alia, of wireless networking devices. MitraStar purchased the Skyworks SE2605L-R from AIT, pursuant to a Purchase Agreement dated April 2, 2015. At all relevant times, MitraStar

understood that it was purchasing a product produced by Skyworks, and that AIT's role was to act solely as Skyworks' sales agent. MitraStar incorporated the Skyworks SE2605L-R into wireless routers it manufactured, including model C1100Z ("C1100Z Router").

8. ZyXEL Communications Corp. ("ZyXEL Corp.") is a Taiwanese corporation which purchased C1100Z Routers from MitraStar.

9. ZyXEL, Inc. is wholly owned subsidiary of ZyXEL Corp. ZyXEL, Inc., from time to time, purchases products from ZyXEL Corp. and markets and distributes those products within the United States. ZyXEL, Inc. purchased and imported, inter alia, C1100Z Routers from ZyXEL Corp., and sold those routers throughout the United States.

10. In sum, MitraStar incorporated the Skyworks SE2605L-R into its C1100Z Routers, which MitraStar sold to ZyXEL Corp., and which ZyXEL Corp. in turn exported to ZyXEL, Inc. for sale in the United States.

ZyXEL, Inc. Customer Experiences Widespread Malfunctioning of MitraStar's C1100Z Router Caused by the Sykworks SE2605L-R

11. On May 12, 2018, CenturyLink, Inc., ZyXEL, Inc.'s U.S. customer, reported to ZyXEL, Inc. widespread reliability and performance problems in C1100Z Routers. In the subsequent weeks, MitraStar engineers analyzed the cause of the problem and determined that it originated in the Skyworks SE2605L-R incorporated into the router.

12. MitraStar reported the problem to Skyworks in or about May 2018, after which Skyworks internally analyzed its source. In June 2018, Skyworks reported to MitraStar that based on its own investigation, the Skyworks SE2605L-R is defective and was the source of the malfunction experienced in C1100Z Routers.

13. Specifically, Skyworks' sent MitraStar a report, dated June 29, 2018 – the "8D Problem Solving Report" ("8D Report") – showing that the Skyworks SE2605L-R was

defective. Specifically, the 8D Report stated that the problem was that the RFin reference grounding level of the Skyworks SE2605L-R was being impeded where epoxy, known as the die attach layer, was used to connect two key components of the device: the die, a semiconducting material on which a circuit is fabricated, and the lead frame, a metal structure that provides the reference grounding level.

14. According to the 8D Report, when functioning normally, the die attach layer effectively connects the die to the lead frame (ground) by way of the conducting properties of the die attach layer, such as the flakes of silver suspended in the epoxy used in the Skyworks SE2605L-R. However, in the Skyworks SE2605L-R, the flakes of silver in the epoxy used for the die attach layer shifted over time away from the copper lead frame toward the backside of the die (the “die backside”) producing less conductivity between the silver flakes in the epoxy and the copper lead frame, and thereby impeding the RFin reference grounding level and causing high “RFin to Ground resistance,” according to Skyworks’ own 8D Report.

15. Increased RFin to ground resistance causes, according to a Skyworks document entitled “SE2605L Mistrastar CenturyLink 187010652” dated June 29, 2018, gain peaking, positive return loss, and a K factor below 1. Such instability causes the oscillation of the Skyworks SE2605L-R to produce a radio signal outside the parameters of its specifications.

16. Under normal conditions, the silver flakes in the epoxy make several points of contact between the die backside and the lead frame, allowing the Skyworks SE2605L-R to have adequate contact between the die and the lead frame (ground). According to the 8D Report, the shifting of the silver flakes in the die attach epoxy developed as a result of the difference in electrode potential of silver and copper; silver particles are repulsed from copper and attracted to the gold layer on the die backside. As a result of silver flakes migrating within the resin base of

the epoxy, a resin-rich layer develops, i.e. absence of silver flakes, along the interface between the epoxy and the copper lead frame, causing high RFin to ground resistance and, in the case of C1100Z Routers, causing its Wi-Fi signal to malfunction. Mechanically, it is not possible to resolve the resin-rich layer after the Skyworks SE2605L-R is assembled.

17. In that 2018 8D Report issued by Skyworks to MitraStar, Skyworks stated that the defect in the Skyworks SE2605L-R had been resolved by the changes Skyworks made to the Skyworks SE2605L-R back in July 2016, which had been incorporated at that time into a new MMIC Power Amplifier designated as model SE2605L-RN (the “Skyworks SE2605L-RN”). Skyworks had begun distributing the new model, Skyworks SE2605L-RN, on September 15, 2016.

Back in 2016 Skyworks Had Developed SE2605L-RN to Replace the Defective SE2605L-R

18. In 2016, according to Skyworks’ 2018 8D Report, a user/customer of the Skyworks SE2605L-R had experienced an “issue” with the device which the user/customer reported to Skyworks. As a result of the user/customer’s report, Skyworks made two principal changes to the Skyworks SE2605L-R in 2016: (i) conversion of the lead frame finish from copper to NiPdAu; and (ii) conversion of the epoxy used for the die attach layer from 2815A to 1290WB, and incorporated these two changes in the new model, the Skyworks SE2605L-RN.

19. Specifically, in or about July 21, 2016, Skyworks finalized its Product Qualification Report (“PQR”). On information and belief, Skyworks distributed the PQR to its customers worldwide, including to MitraStar which received the PQR via e-mail from AIT on September 23, 2016. The PQR described the characteristics of the product with respect to quality and reliability for the new Skyworks SE2605L-RN. The PQR stated as follows:

The product is assembled in the qualified 3x3mm QFN package and using NiPdAu-plated Lead Frame with 1290WB epoxy and using die fabricated in the qualified 5PAE process.

All required tests have been completed and passed and the product is fully released. The product meets Skyworks' reliability requirements for production and is rated at JEDEC MSL3/260°C for moisture sensitivity.

20. On August 16, 2016, Skyworks issued a Product Change Notification (the "PCN"), a document typically issued by a manufacturer to inform customers about a change to a product or its manufacturing process, for the Skyworks SE2605L-R. The PCN, on information and belief, was distributed to Skyworks customers worldwide. MitraStar received its copy of the PCN via an e-mail dated September 23, 2016. The PCN stated the following for the "Description and Scope of Change":

Change SE2605L-R leadframe from Cu to NiPdAu, change epoxy from 2815A to 1290WB, and change part number marking changes from SE2605L-R to SE2605L-RN.

According to the PCN, the first ship date for the replacement Skyworks SE2605L-RN was set for one month later, on September 15, 2016. The PCN also stated that the last date of manufacture for SE2605L-R originally was to be August 31, 2016.

21. In the PCN, Skyworks made a number of misrepresentations to its customers, including MitraStar, including:

- a. The reason for the product changes were "[t]o be consistent with the material set of other Skyworks Product";
- b. "[T]here is no change to fit, function, reliability, quality or safety"; and
- c. "No customer impact is anticipated with this change."

In the PCN, Skyworks did not alert its customers that the product changes were intended to resolve a defect in the prior model, the Skyworks SE2605L-R.

22. Based on Skyworks' 2018 8D Report, the change of the lead frame material in model SE2605L-RN from copper to NiPdAu was intended to resolve the difference in electrode potential created by the copper lead frame and the gold film on the die backside in SE2605L-R.

In fact, Skyworks admitted in a document entitled “RMA 187010652 / SE2605L-R MitraStar/CenturyLink” dated June 29, 2018, that it is a “good practice” to “have similar metals between the leadframe and the die,” which the Skyworks SE2605L-R violated.

23. According to the 8D Report, the malfunction being experienced in MitraStar’s C1100Z Router was caused by the very same two components that Skyworks had replaced two years earlier in July 2016 when it introduced the Skyworks SE2605L-RN: (i) the copper finish of lead frame; and (ii) the composition of the epoxy used for the die attach layer, changes more fully described above.

24. This fact was later confirmed to MitraStar in June 2018 after MitraStar discovered the defect in the C1100Z Router and Skyworks provided the 8D Report. At that time, Skyworks assured MitraStar that MitraStar would not experience the same defect in the Skyworks SE2605L-RN, based on (i) conversion of the lead frame finish from copper to NiPdAu; and (ii) conversion of the epoxy used for the die attach layer from 2815A to 1290WB. To seek further assurance, on June 28, 2018, ShenTsao Lee of MitraStar wrote an e-mail to Charles Pan of Skyworks and others, expressing concern that model SE2605L-RN would not resolve the defect: “If we use SE2605L-RN, how can we make sure it will not happen the same issue? From design point of view, is there anything need to be considered for future production?” In an e-mail dated June 30, 2018, Charles Pan of Skyworks wrote the following response to ShenTsao Lee of MitraStar and others:

We double confirmed SE2605L-RN is more robust than SE2605L-R with our continuous improvements which removed the resin rich layer.

25. In other words, Skyworks specifically acknowledged in 2018 that the Skyworks SE2605L-RN resolved the defect discovered by Skyworks in 2016 in the Skyworks SE2605L-R. However, as stated above, Skyworks had never disclosed that fact when it introduced the

Skyworks SE2605L-RN in 2016 while still producing, marketing, selling, and shipping the defective Skyworks SE2605L-R.

Skyworks Continued to Market, Sell, and Ship Defective SE2605L-R Model after Introduction of SE2605L-RN Model

26. Despite its knowledge of the defect as far back as mid-2016, Skyworks through AIT continued to communicate with MisraStar concerning selling and shipping to MitraStar and other customers the Skyworks SE2605L-R after the publication of Skyworks' August 16, 2016 PCN. Subsequent to mid-2016, MitraStar purchased through AIT approximately 1,454,634 of the Skyworks SE2605L-R, of which approximately 1,065,738 were incorporated into C1100Z Routers sold to ZyXEL, Inc.

27. During that time, Skyworks, through its agent AIT, repeatedly represented that the Skyworks SE2605L-R performed to specifications and was not materially different than the Skyworks SE2605L-RN, despite the fact that, upon information and belief, (i) Skyworks had knowledge of the defect in the die attach layer of the Skyworks SE2605L-R; and (ii) Skyworks had already incorporated two key changes in the Skyworks SE2605L-RN to resolve the defect.

28. On or about October 20, 2016, Skyworks' agent AIT provided MitraStar with samples of the Skyworks SE2605L-RN. When MitraStar reviewed the datasheets for those samples, MitraStar discovered differences between the Skyworks SE2605L-R and SE2605L-RN that were not disclosed in the PCN, including with regard to markings and body dimensions. In an e-mail from Jack Zhu of MitraStar, dated October 19, 2016, to Amy Kuo and others of AIT, Jack Zhu described that these differences were not disclosed in the PCN, and then asked that AIT list all of the differences between the models in the PCN. On October 31, 2016, Jerry Chou of AIT responded by stating that only the marking information, such as the model number, shown on the surface of the Skyworks SE2605L-RN was different.

29. Again on February 7, 2017, a representative of MitraStar inquired of Skyworks' agent AIT, via email dated February 7, 2017, regarding the differences between the Skyworks SE2605L-R and SE2605L-RN. YiFeng Wang of AIT responded, via e-mail that same day, by stating that the main difference is the lead frame material: SE2605L-R is composed of copper and SE2605L-RN is composed of NiPdAu. When MitraStar then requested, via e-mail dated February 8, 2017, any test reports comparing the performance of the two models, AIT stated in an e-mail dated February 9, 2017, that the specifications in SE2605L-R and SE2605L-RN are basically the same and attached two test reports indicating immaterial differences between the two models.

30. Based on the fact that Skyworks provided the original false information that the two models were not materially different, and the fact that AIT was merely Skyworks' distributing agent for the MMIC Power Amplifier, the above misrepresentations were, on information and belief, provided to MitraStar by Skyworks itself through its agent AIT. In sum, Skyworks, via its agent AIT, repeatedly stated to MitraStar that the Skyworks SE2605L-R was of the same quality and not materially different than the Skyworks SE2605L-RN. However, Skyworks knew that these representations were false when made. On information and belief, Skyworks made these misrepresentations in order to encourage MitraStar to continue purchasing its defective Skyworks SE2605L-R in order to sell off its remaining inventory and recoup its costs of production through its unsuspecting customers.

31. In addition to the above, from August 16, 2016 to May 5, 2017, Skyworks repeatedly arranged to sell and/or ship the defective Skyworks SE2605L-R to MitraStar. Beginning with purchase order dated August 18, 2016, which was transmitted via the internet, Skyworks, through its agent AIT, had sold and delivered to MitraStar 966,000 units of the

Skyworks SE2605L-R knowing that they were defective. In total, MitraStar issued the following 11 purchase orders, transmitted via the internet, for purchasing a total of 966,000 units of the Skyworks SE2605L-R during the period August 28, 2016 to November 9, 2016:

3200169607	3200172769
3200169848	3200172948
3200170630	3200173137
3200170824	3200173571
3200170962	3200173925
3200172384	

32. As a result of these purchase orders, Skyworks, through its agent AIT, continued to deliver Skyworks' faulty model, the Skyworks SE2605L-R, to a MitraStar-affiliated entity in China through May 5, 2017 via international forwarder.

33. During this entire time, Skyworks continued to conceal the defects, and never informed or caused its agent AIT to inform MitraStar of any defects, in the Skyworks SE2605L-R prior to June 2018, when MitraStar reported defects in the Skyworks SE2605L-R in its C1100Z Routers, as set forth above. Because of Skyworks' continued concealment of the defects, MitraStar and ZyXEL, Inc. unknowingly continued to sell C1100Z Routers containing the Skyworks SE2605L-R to its unsuspecting customers through August 2018, thus continuing to incur damage as a result of the continuing Skyworks concealment of the defects in the Skyworks SE2605L-R.

34. To date, ZyXEL, Inc. has calculated a failure rate for its C1100Z Routers of approximately 13% caused by the defective nature of the Skyworks SE2605L-R, which exceeds the industry standard failure rate, which is less than 1%.

35. Despite the fact that MitraStar discovered the defect in the SE2605L-R in 2018, at which time it became readily apparent that Skyworks knew of the defect since 2016, Skyworks continued to refuse to acknowledge its responsibility for the damage caused. On October 1, 2018, Denise Lin of MitraStar sent a letter to Matthew Sant of Skyworks seeking aid in resolving MitraStar's liability in connection with the routers sold to CenturyLink containing the Skyworks SE2605L-R:

On May 3rd of this year, CenturyLink, our most important U.S. customer, reported reliability and performance problems in our products. Those problems that were found to be caused by defects in the Skyworks chips. These resulted in CenturyLink having to replace the affected products it had sold to its customers. Since June of this year, our engineering team has been working with yours to analyze to determine of the root cause of the problem. . . . We were told Skyworks was aware of the same defects from its previous analysis of another customer's reliability problem with a same chip [in 2016].

We appreciate Skyworks acknowledging the defect in its SE2605L-R chips and working with MitraStar to resolve it. Unfortunately, CenturyLink has invoked an "Endemic Failure" section of the Resale Agreement. It is seeking compensation that could run to tens of millions of dollars. We hope that we can resolve the issue with CenturyLink to protect our important business relationship and avoid litigation. We will continue to look to Skyworks for cooperation and assistance.

36. To date, Skyworks has not responded to MitraStar's letter dated October 1, 2018. Thus, even after being discovered, Skyworks is still attempting to continue to reap the benefits of its prior misrepresentations.

37. MitraStar and ZyXEL, Inc. have entered into an agreement whereby MitraStar assigned its rights against Skyworks to ZyXEL, Inc.

COUNT I

Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(c)
(Brought by ZyXEL, Inc. Individually and as Assignee of MitraStar)

38. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

39. Skyworks violated RICO, 18 U.S.C. § 1962(c) (“§ 1962(c)”), by the acts described in the prior paragraphs and as further described below.

40. At all relevant times, Skyworks was a “person” within the meaning of 18 U.S.C. §§ 1961(3) and §1962(c).

The Enterprise

41. At all relevant times, AIT constituted an enterprise within the meaning of 18 U.S.C. § 1961(4) and § 1962(c), and was engaged in, and/or its activities affected, interstate commerce within the United States and/or foreign commerce within the meaning of § 1962(c).

42. As set forth more fully above, Skyworks was, at all relevant times, associated with AIT, on information and belief, through a contractual agreement that AIT would act as Skyworks’ Taiwanese agent as directed by Skyworks to market and sell the Skyworks SE2605L-R and other Skyworks products to entities in Asia, the United States, and elsewhere for incorporation into wireless routers (including MitraStar’s C1100Z Routers) and then for further sale to distributors and marketers of wireless routers, including to ZyXEL, Inc. Skyworks’ sale through its agent AIT, and at Skyworks’ direction, of the fraudulently marketed and defective Skyworks SE2605L-R constituted a pattern of racketeering activity, as shown below. The racketeering activity was made possible through Skyworks’ association with AIT and, on information and belief, by Skyworks’ regular and repeated use of the facilities and services of

AIT. As a result, Skyworks participated directly and/or indirectly in the conduct of the affairs of AIT through a pattern of racketeering activity as set forth in 18 U.S.C. § 1962(c).

43. As shown above, AIT's business was not limited to Skyworks' predicate acts of racketeering and AIT conducts business activities extending beyond Skyworks' pattern of racketeering activity accomplished through AIT.

Pattern of Racketeering Activity

44. As shown above, Skyworks devised a scheme to defraud Plaintiff of money and property by means of false or fraudulent pretenses and representations to MitraStar concerning the viability and fitness for use of the Skyworks SE2605L-R, and the continued sale of the SE2605L-R through AIT while Skyworks was fully aware that the SE2605L-R was defective and would cause wireless routers into which it was incorporated to fail.

45. For purposes of executing its scheme, Skyworks delivered numerous documents and communications via e-mail in interstate communications (or received such therefrom) which constituted fraudulent misrepresentations and/or were used to further Skyworks' scheme to sell defective products to MitraStar, ZyXEL, Inc. and others, including (i) communications touting the viability and fitness for use of the Skyworks SE2605L-R; (ii) marketing and delivering the Skyworks SE2605L-R for sale under false pretenses; (iii) continuing to conceal its fraudulent misrepresentations or material defects of the products thereby causing MitraStar and ZyXEL, Inc. unknowingly to sell defective products to its unsuspecting customers through 2018; and (iv) continuing in 2018 to deny its responsibility for the failure of wireless routers containing the Skyworks SE2605L-R. Skyworks also delivered or caused to be delivered through AIT (or received such therefrom) numerous documents and things via the U.S. mails, e-mail, or by

private or commercial interstate carriers which furthered its fraudulent scheme in the same manner. See ¶¶ 18-32, supra.

46. These numerous incidents of fraudulent communications, knowing sale and delivery of defective MMIC Power Amplifiers, and active concealment of the fraud Skyworks perpetrated continued from August 2016 through at least August 2018.

47. Skyworks participated in the scheme knowingly, willfully, and with specific intent to advance its scheme to deceive and defraud Plaintiff. Therefore, Skyworks used wire and mail communications in furtherance of their scheme to defraud Plaintiff in violation of 18 U.S.C. §§ 1341 and 1343. Skyworks used the wires and mails in interstate commerce with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of an unlawful activity. These racketeering activities were multiple, continuous, and ongoing from about June 2016 to about October 2018, and, if its fraud had not been discovered by Plaintiff, Skyworks would have, on information and belief, continued to engage in its fraudulent activities until its supply of the Skyworks SE2605L-R was fully sold to unsuspecting customers, and would have continued to conceal that fraudulent scheme.

48. As a result, Skyworks' violations of federal law as set forth herein, each of which directly and proximately injured MitraStar, ZyXEL, Inc. and other market participants, were part of a pattern of racketeering activity under 18 U.S.C. § 1961(1) and (5).

Plaintiff's Injury and Relief

49. Plaintiff was the ultimate victim of Skyworks' unlawful activities and was injured in its money and property by reason of Skyworks' violation of 18 U.S.C. § 1962(c). To date, ZyXEL, Inc. has experienced approximately a 13% failure rate in the C1100Z Routers they sold. As a result of these failures, ZyXEL, Inc. is financially responsible to its customers, and

MitraStar is financially responsible to ZyXEL, Inc. and its other customers, to rectify the defects in the C1100Z Routers.

50. Plaintiff's injuries were a direct, proximate, and reasonably foreseeable result of that violation, and have been continuing and will continue in an amount to be determined at trial

51. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover treble damages plus costs and attorneys' fees from Skyworks as well as any other relief authorized by this Court.

COUNT II
Fraud and Intentional Misrepresentation
(Brought by ZyXEL, Inc. as Assignee of MitraStar)

52. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

53. The representations of Skyworks through its agent AIT to MitraStar concerning the viability and fitness for use of the Skyworks SE2605L-R were material representations to MitraStar, on which Skyworks intended that MitraStar would rely.

54. Skyworks made these representations with knowledge that they were false and with the intent to deceive and defraud MitraStar and to induce MitraStar to continue to purchase the defective Skyworks SE2605L-R for incorporation into wireless routers that MitraStar manufactured.

55. At the time these misrepresentations were made by Skyworks, MitraStar believed them to be true and relied to its detriment upon them.

56. As a result of the fraud and misrepresentation of Skyworks, MitraStar and ZyXEL, Inc. have suffered substantial damages for which Skyworks is liable to MitraStar in an amount to be determined by the Court, plus interest, costs and attorneys' fees.

COUNT III

Breach of Implied Warranty of Fitness for a Particular Purpose
(Brought by ZyXEL, Inc. as Assignee of MitraStar)

57. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

58. Skyworks knew of the particular purpose for which the Skyworks SE2605L-R were required by MitraStar and knew that MitraStar was relying on Skyworks' skill and judgment to manufacture and furnish suitable goods.

59. MitraStar, in purchasing the Skyworks SE2605L-R from AIT, actually relied on Skyworks' skill in the manufacture and sale of the Skyworks SE2605L-R.

60. As shown above, although MitraStar's contract to purchase the Skyworks SE2605L-R was with Skyworks' agent AIT, Skyworks in 2016 and thereafter affirmatively acted through AIT to encourage MitraStar to purchase the Skyworks SE2605L-R, which Skyworks knew to be defective and not fit for the particular use for which MitraStar intended to use it. As a result, Skyworks was affirmatively involved in the negotiations and communications that resulted in MitraStar's purchase of the Skyworks SE2605L-R from 2016 on, and Skyworks accepted and directly benefitted from the MitraStar/AIT contract, in which AIT was merely the middleman.

61. The Skyworks SE2605L-R is not fit for the particular purpose for which it was required.

62. As a result of Skyworks' breach of the implied warranty of fitness for a particular purpose, MitraStar and ZyXEL, Inc. have suffered harm and will suffer further harm.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. ZyXEL, Inc., individually and as assignee of MitraStar, demands judgment against Skyworks for treble damages, attorneys, costs and interest pursuant to Count I;
2. ZyXEL, Inc., as assignee of MitraStar, demands the damages it has suffered as set forth in Counts II and III above, as well as interest, costs and attorneys' fees; and
3. ZyXEL, Inc. demands such other and further relief as is just and proper.

ZYXEL COMMUNICATIONS, INC.,
Individually and as Assignee of MitraStar
Technology Corporation Limited,

By its attorneys,

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